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### NOTES OF CASES.

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**Was She a Perfect Lady?**—Bessie Moore, of North Carolina, was charged with disorderly conduct, "In that she did curse upon the streets." Having given a bond for her appearance for a breach of some local ordinance, she was stepping into her buggy, when, cautioned by a detaining policeman not to drive through the town, she shocked him by saying she would drive "where she damned please." The Supreme Court of North Carolina in *State v. Moore*, 81 Southeastern Reporter, 693, very diplomatically frees her from the charge: "We will not venture to enter upon any casuistical discussion of the question whether the word damn' is profanity or not, as our decision in the case does not require it. The speech of the defendant was not nice or refined, but this does not of itself render it criminal. Disorderly conduct is a species of nuisance, and it may be a violation of the ordinance without necessarily being indictable at common law, as it is a minor offense below the grade of a misdemeanor and not known to the law as a separate and distinct crime except as made so by statute or municipal ordinance. Conduct can hardly be described as disorderly unless it tends in some degree to disturb the peace or good order of the town or has a vicious or injurious tendency. \* \* \* The defendant expressed her displeasure or futile indignation a little too strongly, and should not have used so indecorous an expletive in doing so, but it did not reach beyond the ears of the policeman and hardly made a ripple on the placid surface of the municipal peace. The evidence did not correspond with the allegation nor tend to support it, nor was there a breach of the ordinance as it is set forth in the affidavit."

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**Superior Quality Satisfies Warranty in Sale.**—That goods need not always be of the description given, or of the same quality ordered, and yet may be sufficient as a compliance with the contract of sale, under certain circumstances, is the holding of *Buffalo Collieries Company v. Indian Run Coal Company*, 81 Southeastern Reporter, 1055. Plaintiff sued to recover for coal which had been delivered to defendant, and defendant sought to recoup damages for an alleged breach of an implied warranty, in that plaintiff had agreed to deliver "nut and slack" coal to defendant, and that, after partial performance of the contract, plaintiff discontinued to furnish the coal ordered, but instead furnished washed "nut and slack" coal, which the defendant found difficult to use in their automatic stokers. The evidence showed, however, that the washed coal was better than the unwashed, in that it contained more heat units. The Supreme Court of Appeals of West Virginia held that, inasmuch as the quantity of heat units in coal was the most desirable quality, the delivery of such coal was a substantial compliance with the contract of sale, though

it could not well be used by the defendant. "There is no evidence that plaintiff sold the coal with reference to its being used in any particular devise for the handling of it, which required dry coal, and therefore there was no implied warranty that would answer such purpose."

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**Boycott of Broker Lawful.**—The anti-trust statute of Missouri denounces combinations to restrain trade or competition, and provides for the recovery of threefold damages to the person injured. Plaintiff's petition charged that it was a commission merchant buying and selling live stock in Kansas City, and that plaintiff was not a member of a certain brokers' exchange or of another exchange whose members were engaged in buying and selling live stock on their own account; that defendants, members of the latter exchange, entered into a pool or combination among themselves and other members of the exchange not to buy or sell any live stock to plaintiff, and not to buy or sell to any members of the brokers' exchange who bought from or sold to plaintiff, and thereby forced plaintiff out of business. The Supreme Court of Missouri in *Co-operative Live Stock Commission Company v. Browning*, 168 Southwestern Reporter, 934, held that the petition did not bring the defendant's actions within the combination denounced by the statute. The court said that since the plaintiff was merely a commission merchant or agency, and neither produced, manufactured, owned, nor carried any article of commerce, the pool or combine formed against plaintiff could, in no manner, result in "restraint of trade or competition in the importation, transportation, manufacture, purchase, or sale of any product or commodity in this state. \* \* \* The commission man is simply an agent engaged in the business of selling one man's cattle to another for an agreed or a reasonable fee. That being unquestionably true, then can it be said that this petition charges or could truthfully charge that the live stock owner, the packer, trader, or the consuming public was or could be damaged by the agreement complained of in this case?"

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**Limitations—A Property Right.**—The defense of the statute of limitations, when it has once accrued, cannot be destroyed by subsequent legislation, but it becomes a vested right. *Rhodes v. Cannon*, 164 Southwestern Reporter, 752. The Supreme Court of Arkansas in that case said that the overwhelming weight of authority is to that effect. "The proposition that the Legislature has the power to take the property of one man and transfer it to another is at once monstrous and absurd. And what is the difference between the proposition and the one that the Legislature has the power to deprive a man of legal defense against a demand set up against him?"